

**Board of Forestry and Fire Protection**

**INITIAL STATEMENT OF REASONS**

**“Conversion and ROW Exemption De Minimis Amendments”**

Draft Document

**Board of Forestry and Fire Protection  
Title 14 of the California Code of Regulations  
Division 1.5, Chapter 4**

**Amend §§ 895.1, 929, 945.1, 945.3, 945.5, 949, 969, 1059, 1100 & 1104.1  
Add Article 8 (commencing with § 1114) to Subchapter 7**

**INTRODUCTION INCLUDING PUBLIC PROBLEM, ADMINISTRATIVE REQUIREMENT, OR OTHER CONDITION OR CIRCUMSTANCE THE REGULATION IS INTENDED TO ADDRESS (pursuant to GC § 11346.2(b)(1))...NECESSITY (pursuant to GC § 11346.2(b)(1) and 11349(a))....BENEFITS (pursuant to GC § 11346.2(b)(1))**

Pursuant to the Z'berg-Nejedly Forest Practice Act of 1973, PRC § 4511, *et seq.* (Act) the State Board of Forestry and Fire Protection (Board) is authorized to construct a system of forest practice regulations applicable to timber management on state and private timberlands.

PRC § 4551 requires the Board to “...adopt district forest practice rules... to ensure the continuous growing and harvesting of commercial forest tree species and to protect the soil, air, fish, wildlife, and water resources...” and PRC § 4553 requires the Board to continuously review the rules in consultation with other interests and make appropriate revisions.

PRC § 4551.5 requires that the rules and regulations adopted by the Board apply to the conduct of Timber Operations, which is defined within PRC § 4527(a)(1) as “the cutting or removal, or both, of timber or other solid wood forest products, including Christmas trees, from Timberlands for commercial purposes, together with all the incidental work, including, but not limited to, construction and maintenance of roads, fuelbreaks, firebreaks, stream crossings, landings, skid trails, and beds for the falling of trees, fire hazard abatement, and site preparation that involves disturbance of soil or burning of vegetation following timber harvesting activities, but excluding preparatory work such as treemarking, surveying, or roadflagging.” The term “commercial purposes”, as used within PRC § 4527 is defined by reference to an illustrative, nonexhaustive list of activities within PRC § 4527(a)(2) that include “(A) the cutting or removal of trees that are processed into logs, lumber, or otherwood products and offered for sale, barter, exchange, or trade, or (B) the cutting or removal of trees or other forest products during the conversion of timberlands to land uses other than the growing of timber that are subject to Section 4621, including, but not limited to, residential or commercial developments, production of other agricultural crops, recreational developments, ski developments, water development projects, and transportation projects.”

Additionally, the Act defines “Timberland” within PRC § 4526 as “land, other than land owned by the federal government and land designated by the board as experimental forest land, which is available for, and capable of, growing a crop of trees of a commercial species used to produce lumber and other forest products, including Christmas trees.”

The Act recognizes that the “forest resources and timberlands of the state are among the most valuable of the natural resources of the state”, and that “it is the policy of this state to encourage prudent and responsible forest resource management...” (PRC § 4512). The act also recognizes that some landowners who own timberland and forest resources may wish to utilize their land for purposes other than the growing, harvesting, and management of timber. In order to accommodate these activities, the Act contains provisions for the conversion of timberland through several mechanisms including Article 9 of the Act, and PRC § 4584 (g).

PRC § 4584 authorizes the Board to adopt regulation to provide an exemption, from all or portions of the FPA, to a person engaging in certain forest management activities specified by the statute.

PRC § 4584 (g) allows the Board to adopt regulations exempting an individual from all or portions of the FPA when the landowner is engaged in “[t]he one-time conversion of less than three-acres to a nontimber use,” can demonstrate a bona fide intent to convert the land use, and has met certain other criteria. The Board has interpreted and implemented these statutory provisions through the adoption of 14 CCR § 1104.1(a). These regulations were adopted by the Board, pursuant to their statutory authority, to provide landowners relief from certain onerous or burdensome portions of the FPRs, including Plan preparation and conversion permit requirements, while maintaining environmental quality by requiring Timber Operations to comply with all other applicable provision of the Act and existing regulations.

Since their initial adoption as part of the Forest Practice Rules (Rules) in 1974, the less than three-acre Conversion Exemption regulations of 14 CCR § 1104.1(a) have been widely utilized by landowners seeking to accomplish various conversion goals, from the construction of residences, to improving rangeland resources, and the Department of Forestry and Fire Protection (Department) has received over 15,000 applications statewide to date. The widespread use of the regulations has brought to light various misapplications and other shortcomings which have been addressed through statutory and regulatory amendments to clarify and make specific the process while maintaining the Less than 3-acre Conversion Exemption as a functional tool for forest land management.

Similar to the exemption provided by PRC § 4584(g) and 14 CCR § 1104.1(a), PRC § 4584(a) authorizes the Board to adopt regulations exempting “[t]he cutting or removal of trees for the purpose of constructing or maintaining a right-of-way for utility lines” from all, or a portion of, the Forest Practice Act. The Board subsequently adopted such

regulations in (ultimately) 14 CCR § 1104.1(c) in 1981, which exempted such activities from timber harvest plan requirements and conversion permit requirements while still requiring that those activities comply with other operational provisions of the Rules.

Additionally, PRC § 4628(a) exempts a public agency from timber harvest plan submission and conversion permit requirements “where the purpose of its Timber Operations is to construct or maintain a right-of-way on its own or on any other public property. In the same 1981 rulemaking action described above, the Board exempted these activities, consistent with the statute, within (ultimately) 14 CCR § 1104.1(b)

Finally, in 2018, the legislature passed, and the Governor approved, Senate Bill (SB) 901 (Chapter 626), which broadly reorganized the statutory structure of authorization for many of the authorized regulatory exemptions from the Act provided for in PRC § 4584. Acting in response to these changes, the Board broadly restructured the regulatory exemptions provided by most of PRC § 4584 within 14 CCR §§ 1038, 1038.1, 1038.2, 1038.3, and 1038.4 to address the changes stemming from SB 901 but did not revise those exemptions adopted within 1104.1 which were authorized by PRC § 4854.

The **problems** are that, though the provisions exempting Less than 3-acre Conversion activities and utility and right-of-way construction and maintenance, have long existed within regulation, their implementation (both by the regulated public and the Department which administers them) has been inconsistent and the regulations themselves lack clarity in a variety of aspects.

The authorization for a Less than 3-acre Conversion Exemption with PRC § 4584(g) allows the Board to adopt regulations for “[t]he one-time conversion of less than three acres to a nontimber use”, with additional specific conditions. This authorization imposes both temporal limitations (“one-time conversion”) and spatial limitations (“less than three acres”) on any regulatory scheme promulgated by the Board to implement this specific exemption. The Board has considered these limitations in their previous adoption of regulations within 14 CCR § 1104.1(a), which exempts the conversion of “...less than three acres in one contiguous ownership, whether or not it is a portion of a larger land parcel and shall not be part of a THP. This conversion exemption may only be used once per contiguous land ownership”, with additional conditions. The imposition of the limitation that the exemption is only available once per contiguous land ownership was an attempt at implementing the above mentioned spatial and temporal limitations of the statutory exemption, but the use of the term “contiguous” (which is not used in statute) has resulted in confusion both in enforcement of the provision by the Department of Forestry and Fire Protection (Department), which are responsible for administering the Rules, as well as in the implementation of this provision by the regulated public.

Additionally, the “one-time” aspect of the authorized statutory exemption has been further implemented in regulation within 14 CCR § 1104.1(a)(2)(A), which provides 1 year from the date of acceptance of the Director of Department (Director) for completion of all Timber Operations authorized by the exemption. Provided that the exemption is

only available once to a landowner, the imposition of such a strict operational period may restrict the ability of landowners to effectuate their conversions, whereas additional flexibility in this regard may provide additional opportunities to landowners while maintaining adherence to the statutory limitations of the exemption.

Furthermore, the applicability of the term “Timberland Conversion” as defined within 14 CCR § 1100(g) to less than 3 acre conversion exemptions on Timber Production Zone land is ambiguous, as the existing regulation states that the existing definition is not applicable to those activities pursuant to 14 CCR § 1104.1.

Regarding right-of-way construction and maintenance activities, the largest issue with the existing regulations is the fact that, beyond the acknowledgment that these activities are exempt from timber harvest plan and conversion exemption requirements (14 CCR § 1104.1(b) and (c)) and that certain other portions of the Rules apply, there is no clarity or certainty in how the remainder of the Rules apply. Additionally, the regulations do not include any mechanism which would notify or inform the Department that those activities are taking place, creating a significant issue related to enforcement of the regulations

As described above, the Act defines “timberland,” in relevant part, as land “available for, and capable of, growing a crop of trees.” “Timber operations” is then defined, in relevant part, as cutting or removing trees “from timberland for commercial purposes.” 14 CCR § 895.1 defines both terms by incorporating the statutory definitions.

Recently, there has been some confusion surrounding these definitions. Specifically, certain members of the regulated community are advocating interpretations of these definitions that are favorable to arguments that right-of-way maintenance activities are not subject to regulation under the Act because those activities are not timber operations that occur on timberland, as defined. The argument posits that once a timberland conversion occurs to establish a right-of-way for utility lines or other infrastructure, then it ceases to be timberland because it is no longer land “available for, and capable of, growing a crop of trees.” As a consequence, some contend that right-of-way maintenance activities cannot be regulated under the Act as timber operations because timber operations occur only on timberland – by definition. As discussed in greater detail later in this document, this argument is flawed in practical application and is inconsistent with indicia of the Legislature’s intent, including express reference to right-of-way construction and maintenance being regulated activities in PRC §§ 4584(a) and 4628(a). Accordingly, the interpretation advanced by some in the regulated community is inconsistent with the Act and does not reflect the position of the Board or the Department.

Furthermore, the regulated community has expressed additional confusion regarding whether the act of cutting or removing trees from a public agency or utility right-of-way constitutes Timber Operations, as defined by PRC § 4527, based on their assertion that the trees which are being cut are not being sold, bartered, or traded, rather their removal is simply for the maintenance of infrastructure. However, that interpretation’s

emphasis on the actor's lack of intent to engage in the commercial sale, barter, or trade of the felled trees is misplaced, as it ignores the Legislature's intent in statutorily defining an inclusive description of "commercial purposes" associated with Timber Operations.<sup>1</sup> It also poses problems for the timber owner who cannot obtain the permits necessary to commercialize the timber *after* a utility has felled the trees. Accordingly, that interpretation is inconsistent with the Act and does not reflect the position of the Board or the Department.

Based on these disputed interpretations of defined terms, certain members of the regulated community are making unilateral determinations that their right-of way activities are not regulated by the Act. The disagreement over the Act's scope causes inefficient use of state resources, as the Board and Department must issue and pursue notices of violation against entities who are willfully ignoring the requirements of the Act.

An additional problem pertaining to the maintenance of utility rights-of-way has been appropriate designation of "Danger Trees" for removal. The existing regulatory definition in 14 CCR §895.1 defines a Danger Tree as one that "could damage utility facilities should it fall" but also enumerates types of structural defects that must be present in the tree. However, it does not require that these designations be made by a qualified professional, such as a Registered Professional Forester or professionally certified arborist. In practice, utilities may rely on their own employees and consultants to designate trees for removal as Danger Trees based primarily on the proximity of the tree to utility infrastructure, sometimes without due consideration for the definitional requirement for a structural deficiency in the tree. As a result, reports are on the rise of utilities aggressively removing apparently healthy trees located outside of the utility's legal easement under the pretext that they are "Danger Trees."

Finally, maintenance of legally recorded easements on existing utility rights-of-way are generally ongoing and long-term management activities, where both the parties of landowner and utility have an awareness and knowledge of operations, and which are unlikely to have any impact on the environment, but are still subject to all the same regulatory requirements and restrictions which are imposed on construction activities, which are dissimilar in scope and impact. The minimal opportunity for these activities to cause issues or impacts with the Act or Rules suggests that such activities should not be regulated in the same fashion as traditional Timber Operations. Due to the static nature of these facilities, operations to maintain their surrounding rights-of-way occur year-after-year and generally result in minimal disturbance as the constant maintenance

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<sup>1</sup> Legislative history reflects that the Legislature defined "commercial purposes" in response to a situation in which a ski resort removed trees for a new ski run without seeking permits under the Act, but did not seek to commercialize the timber. (See Assembly Floor Analysis – Concurrence in Senate Amendments to AB 4098, August 23, 1990.) By statutorily defining "commercial purposes," the Legislature intended to clarify that "commercial purposes" as used in the definition of "Timber Operations" may include more than commercializing the timber itself. By defining it inclusively, the Legislature further intended to leave open the possibility that additional types of commercial purposes underlying tree cutting or removal qualify as Timber Operations subject to the Act.

activities result in only minor and incremental modifications being made every year. Furthermore, the maintenance of these rights-of-way and facilities are both required by various state law (PRC § 4292, PRC 4293, 4295.5, the California Public Utility Commission's General Order 95, Rule 35), and are necessary to reduce the risk of wildfire and promote public safety through proper maintenance.

The **purpose** of the proposed action is to: 1) revise the regulatory spatial and temporal limitations of the existing less than 3 acre conversion exemption within 1104.1 to provide additional clarity; 2) revise the less than 3 acre conversion exemption regulations to improve flexibility for landowner implementation within the statutory limits of the exemption; 3) revise the definition of Timberland Conversion within 14 CCR § 1100(g)(2) to address conversion exemption activities on TPZ lands; 4) clarify the applicability of the Rules for various right-of-way construction and maintenance, including the definition of terms used within those Rules and to make those activities consistent with the Act; 5) improve the clarity and efficiency of the regulations related to the regulatory exemptions authorized by PRC § 4584(a), (g), and 4628(a) to make them consistent with the regulatory revisions to exemptions following the passage of SB 901 and general purpose of the Act to provide adequate resource protection while maintaining a minimally burdensome ministerial permitting process for those activities; 6) provide regulatory relief for certain utility right-of-way maintenance operations in order to promote public, and wildfire, safety in these areas; and 7) improve the overall clarity of the regulations and to ensure consistency with the purposes of the Act, particularly those purposes related to resource protection.

The **effect** of the proposed action is to: 1) revise less than 3 acre conversion exemption regulations to permit a landowner to utilize the exemption once on a parcel, throughout the duration of that person's ownership of the parcel; 2) extend the timelines for completion of Timber Operations and effectuation of conversion under a permitted less than 3 acre conversion exemption; 3) clarify the definition of Timberland Conversion for activities conducted under statutory exemption within PRC § 4584(a), (g) or 4628(a) on TPZ lands; 4) revise the definitions of Timberland and Timber Operations to clarify the applicability of the Rules to certain right-of-way construction and maintenance activities; 5) revise regulations related to right-of-way construction and maintenance exemptions to ensure appropriate resource protection through implementation and enforcement of the regulations; 6) provide a *de minimis* exemption for the maintenance and repair of existing utility rights-of-way across a legally recorded easement; and 7) revise the structure and content of the entirety of 14 CCR § 1104.1 to clarify submission, notification, and operational requirements and limitations for all permitted activities to promote consistency with the statutory changes within SB 901 and elsewhere in the regulations in 14 CCR § 1038 *et seq.*

The **benefit** of the proposed action is the maintenance of a comprehensive regulatory scheme which allows for the clear and consistent application and enforcement of the Forest Practice Rules related to less than 3-acre or less, or right-of-way construction and maintenance exemptions. These measures may benefit environmental quality throughout the state through improved clarity regarding prohibitions and limitations

related to Timber Operations which are intended to prevent environmental impact. Additionally, the improvement of notification processes will benefit the efficiency of the Departments inspections and enforcement of exemption operations.

**SPECIFIC PURPOSE OF EACH ADOPTION, AMENDMENT OR REPEAL (pursuant to GOV § 11346.2(b)(1)) AND THE RATIONALE FOR THE AGENCY'S DETERMINATION THAT EACH ADOPTION, AMENDMENT OR REPEAL IS REASONABLY NECESSARY TO CARRY OUT THE PURPOSE(S) OF THE STATUTE(S) OR OTHER PROVISIONS OF LAW THAT THE ACTION IS IMPLEMENTING, INTERPRETING OR MAKING SPECIFIC AND TO ADDRESS THE PROBLEM FOR WHICH IT IS PROPOSED (pursuant to GOV §§ 11346.2(b)(1) and 11349(a) and 1 CCR § 10(b)). *Note: For each adoption, amendment, or repeal provide the problem, purpose and necessity.***

The Board is proposing action to amend 14 CCR §§ 895.1, 929, 945.1, 945.3, 945.5, 949, 969, 1059, 1100, and 1104.1, and to adopt Article 8, beginning with § 1114

#### **General Note on the Amendment of "THP" to "Plan"**

Throughout the proposed action, the defined initialism "THP" (14 CCR § 895), or other terms which are inclusive within the defined term of "Plan" within 14 CCR § 895.1, have been replaced with the defined term "Plan". When these regulations were initially adopted, the Timber Harvesting Plan (THP) was one of the only discretionary permits for timber harvesting provided by the Rules. Since that time, numerous discretionary permitting vehicles have been created within regulation, which are identified throughout most of the modern Rules as "Plans". The purpose of amending this term within these provisions is to capture the applicability of the regulations to all discretionary timber harvesting permitting vehicles, not simply the Timber Harvest Plan. This is necessary to clarify the applicability of the regulations and to aid in their implementation and enforcement.

#### **Amend § 895.1. Definitions.**

The proposed action provides that the definition of the term "Approved and Legally Permitted Habitable Structure" is applicable throughout the Rules, not simply to 1038(c)(6). The purpose of this amendment is to clarify the applicability of this term, which is being used within the proposed action in order to promote consistency of terms to improve the clarity of the regulations. The term is being used to identify structures around which certain fuel treatment requirements exist. The use of the existing defined term is suitable and appropriate to address the similar scope of applicability of these regulations. This amendment is necessary to improve the consistent implementation of the regulations.

The proposed action revised the definition of "Danger Tree" in a manner which eliminates the prescriptive elements of the definition in favor of a more performance-based method which is more reliant upon professional determination and discretion. The revised regulations require that a Registered Professional Forester (RPF), their Supervised Designee (as defined within 14 CCR § 895.1), or a professionally certified

arborist utilize established risk assessment tools or guidelines to identify trees which pose a risk to utility infrastructure. The existing regulations within 14 CCR § 1104.1(i)(2) currently establishes a role for a “professionally certified arborist” as someone who may identify large old trees that may be harvested under a conversion exemption. The proposed action establishes an additional role for these professionally certified arborists in the identification of these hazards under certain conditions. The requirement that an RPF or professionally certified arborist make these evaluations is necessary to ensure both professional accountability for the removal of hazardous trees, as well as ensure appropriate implementation of risk assessment tools or guidelines. Regarding those risk assessment tools and guidelines, the proposed action requires that they be approved, certified, or otherwise recognized by a public agency or professional organization for the purposes of maintaining accountability for resource protection, as well as ensure appropriateness of such guidelines through third-party verification through parties which have either a public or professional interest in such matters. The proposed action further provides an illustrative, non-exhaustive list of which such assessment tools or guidelines may be acceptable for the purposes of providing further guidance to the regulated public in this process. Furthermore, the proposed action excludes Wildfire Mitigation Plans as described by Public Utilities Code (PUC) § 8386 from being used as an assessment tool or guidelines for the risk assessment of trees which may pose a danger. PUC § 8386, which describes the requirements of a WMP, simply requires the inclusion of “plans for vegetation management” (PUC 8386(c)(8)), and lacks clarity with regards to the individual assessment of tree-based risk. An examination of recently approved WMPs confirm this issue, as the need for assessment is described within the plans, but the substantive nature of those assessments is not provided. In some cases, the assessment criteria are identified as simply those within the existing regulatory definition for a Danger Tree, which the proposed action seek to modify. Furthermore, within CPUC Wildfire Safety Division Resolution WSD-002: Guidance resolution on 2020 wildfire mitigation plans, Section 5.4.3 identifies that a common deficiency of all WMPs is the practice of aggregating initiatives into broader programs, which prevents assessment of the efficacy of individual initiatives related to risks, costs, and ability to reduce wildfire risk. Provided this information, it is inappropriate to accept a potential assessment tool on the basis that it has been accepted by a public agency when that public agency is generally unable to fully evaluate effectiveness of those programs or initiatives. These amendments are necessary to facilitate the designation and eventual removal of such trees under permitting mechanisms described in 14 CCR § 1114 and authorized by PRC § 4584(a). In particular, requiring professional involvement and proper risk assessment tools is necessary to ensure that Danger Tree identification and removal on or near a right-of-way reflects the intent and purposes of the Act to preserve and prudently manage forestry and timber resources, and not unduly influenced by mere proximity of a tree to utility infrastructure.

Included within the revised definition of “Danger Tree” the proposed action includes additional criteria which must be satisfied in order for a tree to meet the definition (in addition to the methods for determination as described above). These criteria require that a tree both: has one or more structural defects that make the tree susceptible to a risk of failure and which warrants hazard abatement (as determined by the parties

described above), and that the tree failure due to such structural defect may cause the tree to come in contact with, damage, or otherwise disrupt the service provided by, a facility or infrastructure located in a certain right-of-way. These purposes of these additional criteria are to accurately identify and define that danger and risk are relative to both the tree's likelihood of failure and that the likelihood that that failure will in some way impact a utility or public agency right-of-way. Such criteria ensure that healthy trees are not improperly identified as Danger Trees primarily by reason of proximity to infrastructure, thereby preventing tree removal that is inconsistent with the preservation and prudent management of forestry resources. These amendments are necessary in order to provide a comprehensive definition to facilitate the designation and eventual removal of such trees under permitting mechanisms described in 14 CCR § 1114 and authorized by PRC § 4584(a).

The proposed action amends the regulatory definition of "Timberland" to clarify that the existing definition, which is repetition of the statutory definition within PRC § 4526, does not preclude lands which are subject to a utility or public agency right-of-way, as described within 14 CCR § 1114 (see discussion below), as satisfying the statutory definition of timberland. The purpose of this amendment is to clarify the scope and applicability of this definition with regard to certain right-of-way maintenance and construction activities, which has been the subject of confusion recently. As noted previously, certain members of the regulated community are making unilateral determinations that their right-of-ways are not Timberland, contrary to the position of the Board and the Department. The fact that a right-of-way can require ongoing maintenance to remove trees suggests that the land remains capable of growing a crop of trees. Moreover, landowners can sell any timber harvested as a result of right-of-way maintenance activities. Similarly, a landowner is not necessarily precluded from growing and harvesting timber on a right-of-way, even if the utility's right-of-way empowers a utility to remove the trees at its discretion. All of these situations are consistent with a right-of-way remaining "available for, and capable of, growing a crop of trees" and, therefore, qualifying as timberland. Additionally, PRC § 4584 authorizes the Board to exempt from all or portions of the Act the "cutting or removal of trees for the purpose of constructing or maintaining a right-of-way for utility lines," and PRC § 4628 prohibits a public agency from being required to "submit a timber harvesting plan or file an application for conversion with the board where the purpose of its timber operations is to construct or maintain a right-of-way... ." Mentioning right-of-way construction and maintenance in these statutes would be unnecessary if the Legislature considered such activities categorically excluded from the definition of timber operations and timberland. Thus, PRC §§ 4584 and 4628 both demonstrate the Legislature's intent that right-of-way construction and maintenance activities are, at least in some instances, timber operations occurring on timberland. Furthermore, the proposed rule text does not directly add or subtract anything to scope of the definition of timberland. Instead, it singles out a key phrase used in the definition for interpretive clarification. As a result of the proposed regulation, the scope of lands qualifying as timberlands should remain unchanged – it is neither enlarged to include new lands as timberlands nor narrowed to exclude existing timberlands. The proposed amendment is necessary to clarify the

scope of the defined term related to these activities and to maintain harmony with the statutory definition of timberland and the overarching purposes of the Act.

The proposed action additionally amends the regulatory definition of Timber Operations, which is simply a citation of the statutory definition, with an amendment that further clarifies the scope of “commercial purposes”, as inclusively described within PRC § 4527(a), to also include construction or maintenance of a right-of-way pursuant to 14 CCR § 1114 (see discussion below), provided that the cutting or removal of trees for those purposes has a reasonable nexus to a commercial activity. The purpose of this amendment is to further clarify the scope of activities which satisfy this definition and to provide additional examples to the regulated public to aid in this clarity. The clarification of this term relies upon non-technical and commonly understood meanings of terminology. “Commercial” is generally defined in reference to trade and commerce relating to good or services. For instance, Black’s Law Dictionary defines “commerce” as “[t]he exchange of goods and services, especially on a large scale involving transportation between cities, states, and nations.”<sup>2</sup> In this respect, removing trees for maintenance of a public or private utility right of way is consistent with such a common understanding of the term “commercial purpose.” Importantly, these amendments reflect the Legislature’s long-standing position documented in legislative history that the term “commercial purposes” is not narrowly limited to the cutting and removal of trees for sale, barter, or trade of the timber. Utilities provide a service to customers in exchange for fees and general transportation along public rights-of-way are a vital element of commerce. Thus, removing trees to ensure that utility service, or general public right-of-way access can be provided continually, safely, and reliably is reasonably characterized as a commercial purpose as the term is commonly understood. These amendments are necessary to clarify the scope of the defined term related to such activities and to maintain the purposes of the Act, consistent with the Legislature’s intent.

#### **Amend §§ 929, 945.1, 945.3, 945.4, 949.9, 969, 1059, and 1104**

References within these sections have been updated to accommodate the restructuring of 14 CCR § 1104.1 and the movement of existing 14 CCR §§ 1104.1(b) and (c) to the newly adopted 14 CCR § 1114. Additionally, improvements to grammar, capitalizing defined terms, and consistent use of defined terminology has been implemented within these sections for the purposes of improving the clarity and consistency of these section. These amendments are necessary in order to accommodate this restructuring and movement of provisions.

#### **Amend § 1100. Definitions**

The proposed action imposes the existing regulatory definition of “Timberland Conversion” for activities on non-TPZ timberland to those on TPZ lands for activities pursuant to 14 CCR § 1104.1. Currently, Timberland Conversion on non-TPZ land in 14 CCR § 1101(g)(1) is identified as transforming timberland to a non-timber use where “(A) Future timber harvests will be prevented or infeasible because of land occupancy and activities thereon”, among other conditions. However, on TPZ lands, timberland

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<sup>2</sup> Black’s Law Dictionary (8<sup>th</sup> Ed. 2005); see also Merriam-Webster’s Collegiate Dictionary (10<sup>th</sup> Ed. 1991).

conversion is identified as "...the immediate rezoning of TPZ lands," but conversion exemptions pursuant to 14 CCR § 1104.1 are excepted from this requirement of immediate rezoning. If given a literal construction, the extant provision is potentially inconsistent with the purposes and the Act, and the Board's intent in adopting it, to the extent that it suggests that zoning is the exclusive criteria by which a conversion occurs on TPZ lands. The immediate rezoning of TPZ land, as described in the extant provision, is intended to reflect a situation unique to TPZ land in which a conversion can occur in the absence of timber operations. In addition, the extant language presents a potential issue with the regulations where the filing of a conversion exemption on TPZ land simply becomes a *de jure* conversion even when there is no "conversion" of the land, as defined by plain English or other Board regulations or statute. The purpose of the proposed action is to clarify that timberland conversions pursuant to 14 CCR § 1104.1 exemptions on TPZ lands must comply with those conditions of 1101(g)(1)(A)-(C), which would ensure that actual physical conversion was occurring and that this process is used appropriately. This amendment is necessary to clarify the definition of these activities to adequately implement and enforce regulations related to the conversion of Timberlands.

**Amend § 1104.1(a) (formerly un-lettered preamble)**

The proposed action eliminates requirements related to the harvesting of certain large and old trees from this subsection. This provision is moved to 1104.1(g)(17) in order to improve and clarify the structure of the regulations. This amendment is necessary to promote the restructuring of the section.

**Amend § 1104.1(b) (formerly § 1104.1(a))**

The proposed action allows use of the exemption provided by 14 CCR § 1104.1 once per parcel for the duration of a Person's (as defined within the section) ownership of that parcel. Previously, this allowance was provided to a "contiguous ownership", which is less clear than the language of the proposed action, which allows use of the exemption on a single, well-defined and trackable unit of ownership. The purpose of this amendment is to improve the clarity of the "one-time" conversion as authorized by the exemption in PRC § 4584(g) through making the exemption available a single time on any given parcel for the duration of a given ownership. This amendment is necessary in order to clearly implement the provisions of PRC § 4584(g) to promote accurate and efficient implementation and enforcement of the regulations.

**Amend § 1104.1(c) (formerly § 1104.1(a)(1))**

The proposed action requires that the notice required for submission to conduct Timber Operations pursuant to 14 CCR § 1104.1 must be prepared by an RPF on a form prepared the Department and submitted prior to the commencement of Timber Operations. These purpose of this amendment is to clarify the format and timing by which the notice must be submitted. These amendments are necessary to adequately implement the requirements surrounding the notice by the regulated public, and to provide appropriate review and enforcement of those provisions by the Department.

**Amend § 1104.1(c)(1) (formerly § 1104.1(a)(1)(A))**

The proposed action requires that a notice of conversion exemptions pursuant to this section include certain contact and identification information for the Timberland owner. The purpose of this amendment is to clarify the previously utilized term of “owner of the Timberland to be converted” as the term “Timberland owner” is widely utilized throughout the Rules and there is no distinction between the parties identified by either phrase. This amendment is necessary to ensure appropriate and accurate implementation and enforcement of these regulations.

**Amend § 1104.1(c)(2) (formerly § 1104.1(a)(1)(B))**

The proposed action requires that a notice of conversion exemption pursuant to this section include a legal description of the location of the timber Operation, as well as the county, and assessor parcel number. The purpose of this amendment is to clarify the required submission information necessary to accurately identify where operations are taking place, as well as to eliminate redundant requirements to show section, township, and range, which is information which is inclusive of a legal description. These amendments are necessary to accurately implement and enforce these regulations.

**Repeal § 1104.1(a)(1)(C)**

The proposed action repeals the existing mapping requirements in favor of those adopted within 14 CCR § 1104.1(c)(7). This amendment is necessary to clarify where those mapping standards are located. Please see the above referenced provision for additional information.

**Amend § 1104.1(c)(3)**

The proposed action requires that a notice of conversion exemption pursuant to this section include the tentative date of commencement of Timber Operations. The purpose of this amendment is to clarify what information must be submitted on the notice, and is necessary to aid in the application and enforcement of the regulations by the Department.

**Amend § 1104.1(c)(4)**

The proposed action moves, but does not modify, the existing requirements of 14 CCR § 1104.1(a)(6) for the purposes of promoting a more orderly and logical regulatory structure. This amendment is necessary to clarify this restructuring.

**Amend § 1104.1(c)(5) (formerly § 1104.1(a)(1)(D))**

The proposed action requires that a copy of any use permit or other permit issued by a local jurisdiction that is required for conformance with regulatory requirements of the local jurisdiction for the proposed conversion activities be submitted with a notice of conversion exemption, when available. The purpose of this amendment is to improve the efficacy of the regulations and eliminate redundant verification from a county “authorized designee”, as previously required, in instances where a permit for land use which may be necessary for proposed conversion activities has already been obtained. This amendment is necessary to clarify this submission requirement and to aid in its implementation and enforcement by the Department.

The proposed action additionally provides that, where no permit is required or has been obtained, the existing methods of determining conformance with local requirements are maintained: through county verification or RPF certification. The purpose of this amendment is to maintain these options for implementation in order to address the diversity of land use practices and governance which exists throughout the state. This amendment is necessary in order to clarify these requirements.

#### **Amend § 1104.1(c)(7)**

The proposed action requires a map to be submitted with a notice of conversion exemption pursuant to this section, as well as to provide additional standards related to the map. The requirement to submit a 7 ½ minute USGS quadrangle map or its equivalent is an existing requirement of 14 CCR § 1038.2(a), and the Board has retained this requirement as it is suitable and appropriate for use in disclosing the operations permitted here. The proposed action further clarifies the minimum scale of the map to be used as the potential maximum scope of operations pursuant to this section is 3 acres and too large of a scale would not provide meaningful mapping or disclosure of operations. The amendment also provides that additional maps are also allowable for submission, including digital shapefile information, if they are able to improve map clarity and their standards and conditions are additionally specified within this amendment. Furthermore, the use of color coding is prohibited, a legend is required to be submitted on a map, and, if more than one yarding system is used, the yarding systems are to be specified and mapped. Similar standards exist within 14 CCR § 1038.2, and are suitable here to provide an adequate level of mapping disclosure. These amendments are necessary in order to clarify the requirements for maps which are submitted for this conversion exemption and to provide flexibility to the submitter in the preparation of the maps.

Additionally, the proposed action requires that the maps described above contain certain information and details. Most of these details and requirements exist as potential requirements for disclosure within 14 CCR § 1038.2 and PRC § 4584.1(a) and are suitable and appropriate here to provide adequate disclosure of conversion exemption activities in order to ensure compliance with, and enforcement of, these regulations. The clarification of these requirements is necessary to promote such compliance and enforcement.

#### **Amend § 1104.1(c)(8)**

The proposed action requires the submission of certain documentation which may be required by 14 CCR § 1104.1(g)(9). Existing regulations within 14 CCR § 1104.1(a)(2)(I) provide that certain Timber Operations may occur with written concurrence from a Department Archaeologist and that that written concurrence be submitted with the notice of conversion exemption. The purpose of the amendment is to reiterate that requirement under the information to be submitted with the notice of 14 CCR § 1104.1(c). This amendment is necessary to promote clarity and consistency within the regulations and to ensure their appropriate implementation via appropriate identification of required submission materials in a single subsection.

**Amend § 1104.1(c)(9)**

The proposed action requires the submission of certain documentation which may be required by 14 CCR § 1104.1(g)(17). The proposed amendments within 14 CCR § 1104.1(g)(17), and similar requirements in existing regulations within 14 CCR § 1104.1(i) provide that the removal of certain large and old trees may occur under certain conditions, including certain certifications. The purpose of the amendment is to reiterate that requirement under the information to be submitted with the notice of 14 CCR § 1104.1(c). This amendment is necessary to promote clarity and consistency within the regulations and to ensure their appropriate implementation via appropriate identification of required submission materials in a single subsection.

**Amend § 1104.1(c)(10) (formerly § 1104.1(a)(1)(F))**

The proposed action adds the submitter and the LTO to the list of parties which must sign the submitted notice of conversion exemption pursuant to this section. The purpose of this amendment is to ensure that all parties involved with timber harvesting activities pursuant to this section verify their involvement in this process. This amendment is necessary to clarify this signature requirement of these parties.

**Amend § 1104.1(d)**

The proposed action relocates and combines the existing provision of 14 CCR §§ 1104.1(a)(4) and 1104.1(a)(4)(A). The purpose of this amendment is to promote the restructuring of the regulations and is necessary in order to improve their clarity and implementation.

**Amend § 1104.1(e)**

The proposed action requires that the Department provide copies of the submitted notice of conversion exemption to the appropriate Regional Water Quality Control Boards, Department of Fish and Wildlife, and California Geologic Survey offices upon acceptance the notice. This provision is an implementation of PRC § 4584.1(h), which the Board found suitable and appropriate for application to the less than 3 acre conversion to allow for adequate disclosure of the exemption activities to agencies which may have authority related to certain forest management activities associated with timber operations conducted pursuant to 14 CCR § 1104.1. The proposed action requires that other agencies be notified upon acceptance, rather than upon submission as identified within PRC § 4584.1(h) as many notices may be submitted and not accepted, resulting in unnecessary notification to additional agencies. This adoption is necessary to clarify this requirements to both the CAL FIRE and the regulated public and to aid in their application and enforcement.

**Amend § 1104.1(f)**

The proposed action relocates the existing provision of 14 CCR §§ 1104.1(a)(2)(G). The purpose of this amendment is to promote the restructuring of the regulations and is necessary in order to improve their clarity and implementation.

**Amend § 1104.1(g)(1) (formerly § 1104.1(a)(2)(A))**

The proposed action extends the window for completion of Timber Operations conducted pursuant to this section from 1 year to 5 years from the date of acceptance. The purpose of this amendment is to provide the timberland owner additional flexibility in effectuating their conversion. Similar timelines for permit effectiveness and completion exist with PRC § 4590(a)(1) and are suitable and appropriate for the operations described in 14 CCR § 1104.1. This amendment is necessary to clarify the effective period of operation in order to appropriately implement and enforce these regulations.

**Amend § 1104.1(g)(2) (formerly § 1104.1(a)(2)(B))**

The proposed action extends the window for completion of conversion activities from two to seven years from the date of acceptance by the director, except in certain instances. The purpose of this amendment is to both eliminate any potential inconsistencies created by the extension in 14 CCR § 1104.1(g)(1) described above, as well as to provide further flexibility to the timberland owner in effectuating a conversion. This amendment is necessary to clarify these timelines for the implementation and enforcement of these provisions.

**Amend § 1104.1(g)(3) (formerly § 1104.1(a)(2)(C))**

The proposed action states that the RPF or supervised designee must flag the boundary of the Harvest Area (as defined in 14 CCR § 895.1) and any applicable Watercourse and Lake Protection Areas and Equipment Limitation Zones. Previously this provision explicitly required site visitation, but this is redundant given the physical requirements of flagging. Additionally, the boundary of the conversion exemption Timber Operation has been replaced with the defined term of “Harvest Area” in order to improve the clarity of these provisions. These amendments are necessary to improve the clarity of the existing regulations and for their appropriate implementation and enforcement

**Amend § 1104.1(g)(4) (formerly § 1104.1(a)(2)(D))**

The proposed action requires that certain surface fuels resulting from Timber Operations (certain Slash and Woody Debris) be chipped, piled and burned, buried, or removed from the site within a certain time frame and eliminates the more prescriptive and detailed requirements, including those exclusive to pine, of previous 14 CCR § 1104.1(a)(2)(D)1. through 9. The purpose of this amendment is to simplify the existing surface fuel treatment requirements in order to improve the clarity of those requirements while maintaining an effective fuel treatment standard. The elimination of all fuels created by Timber Operations ensures appropriate hazard reduction following any Timber Operations conducted pursuant to 14 CCR § 1104.1 and, provided that an alternative use is to be implemented on the site, is appropriate and necessary in order to ensure appropriate fuel treatment is conducted for a variety of potential future conditions. Additionally, the proposed action specifies a variety of methods by which fuels must be treated for the purposes of maintaining flexibility in application of these regulatory standards. These amendments are necessary to clarify treatment requirements and to appropriately implement and enforce them.

**Amend § 1104.1(g)(5))(A) (formerly § 1104.1(a)(2)(E)1.)**

The proposed action requires that erosion control structures be installed on certain features to a performance-based standard at certain times during the winter period. The performance-based standards are repetitive of those standards within 14 CCR § 914.6(a), 934.6(a), and 954.6(a) and are intended to promote both consistency with existing regulation and preservation of environmental quality during winter period operations pursuant to 14 CCR § 1104.1. Additionally, those erosion control structures must be installed prior to a weekend or other shutdown period during the winter period, which reiterates and is consistent with the requirements of 14 CCR § 914.7(c)(3), 934.7(c)(3), and 954.7(c)(3). The use of these existing standards here is suitable and appropriate as the regulations within 14 CCR § 1104.1(g)(5) identify requirements for tractor operations during the winter period for Timber Operations conducted pursuant to 14 CCR § 1104.1, which is generally the scope of the referenced and restated regulations. This amendment is necessary for clear implementation and enforcement of these regulations.

**Amend § 1104.1(g)(6) (formerly § 1104.1(a)(2)(F))**

The proposed action prohibits Timber Operations pursuant to 14 CCR § 1104.1 within a WLPZ except for certain specific activities. The activities identified in 14 CCR § 1104.1(g)(5)(A) through (E) are currently allowed within a WLPZ in certain watersheds pursuant to 14 CCR § 916.9(s)(1) through (5), 936.9(s)(1) through (5), and 956.9(s)(1) through (5) and are suitable and appropriate for implementation for Timber Operations conducted pursuant to 14 CCR § 1104.1 everywhere due to the similar ministerial process and scope of Operations consistent across exemption Timber Operations, such as those within 14 CCR § 1038. This amendment is necessary to clarify these allowable activities in order to appropriately implement and enforce the regulations.

**Amend § 1104.1(g)(7)**

The proposed action relocates the existing provision of 14 CCR § 1104.1(h). The purpose of this amendment is to promote the restructuring of the regulations and is necessary in order to improve their clarity and implementation. The proposed action additionally identifies that those previously excepted activities in 14 CCR § 1104.1(g)(6), described above, are not included in the existing prohibition in order to avoid any inconsistency in the regulations.

**Amend § 1104.1(a)(2)(G)**

The proposed action deletes the existing provision of 14 CCR § 1104.1(a)(2)(G) to be moved to 14 CCR § 1104.1(f). The purpose of this amendment is to promote the restructuring of the regulations and is necessary in order to improve their clarity and implementation. Please see the description of provision 14 CCR § 1104.1(f) for additional discussion.

**Amend § 1104.1(g)(9) (formerly § 1104.1(a)(2)(I))**

The proposed action prohibits Timber Operations on any site that satisfied the criteria listed in 14 CCR § 895.1 for a Significant Archaeological or Historical Site. The purpose of this amendment is to clarify the provision through the implementation of the defined

term. This amendment is necessary to provide such clarity to the regulations in order to ensure appropriate implementation and enforcement.

**Amend § 1104.1(g)(10) (formerly § 1104.1(a)(2)(J))**

The purpose of the proposed action is to require that an RPF comply with 14 CCR § 1035.2 relating to interaction between the LTO and the RPF for activities conducted pursuant to 14 CCR § 1104.1, and to eliminate less prescriptive requirements in existing regulations in 14 CCR § 1104.1(a)(2)(J). This section outlines requirements and timelines for RPF and LTO responsibilities and disclosures. The requirements of 14 CCR § 1104.1 are somewhat complex and may lead to issues or conflict between RPFs and LTOs and this requirement for compliance with 14 CCR § 1035.2 is necessary to provide some structure and required disclosure to avoid those conflicts. This adoption is additionally consistent with PRC § 4584 (k)(7)(G). This adoption is necessary to clarify this requirement to both the RPF and the LTO.

**Amend former § 1104.1(a)(4)**

The proposed action relocates and combines the existing provision of 14 CCR §§ 1104.1(a)(4) and 1104.1(a)(4)(A) to 14 CCR § 1104.1(d). The purpose of this amendment is to promote the restructuring of the regulations and is necessary in order to improve their clarity and implementation.

**Amend former § 1104.1(a)(6)**

The proposed action relocates and combines the existing provision of 14 CCR §§ 1104.1(a)(6) to 14 CCR § 1104.1(c)(4). The purpose of this amendment is to promote the restructuring of the regulations and is necessary in order to improve their clarity and implementation.

**Amend § 1104.1(g)(14) (formerly § 1104.1(a)(7))**

The proposed action provides that the Department may provide for inspection, as needed, to determine that conversion activities are completed. The purpose of this amendment is to eliminate a compulsory requirement on the Department to conduct inspections of conversion activities and provides discretion as to when those inspections should occur. The act of inspection may or may not be necessary in order to adequately enforce the forest practice regulations and should be implemented as necessary in order to provide for efficient utilization of Department resources. This amendment is necessary in order to clarify this revision in inspection requirements.

**Amend § 1104.1(g)(15)(C)2.c. (formerly § 1104.1(a)(8)(C)2.c.)**

The proposed action requires that, following a change in ownership and certain failures to complete an exemption, a new Timberland owner is required to dispose of Slash and Woody Debris consistent with the fuel treatment requirements within 14 CCR § 1104.1(g)(4). The purpose of this amendment is to ensure that all material which is generated by those uncompleted Timber Operations is treated in order to reduce the fire hazard associated with those operations. This amendment is necessary to implement these regulations and ensure appropriate fuel hazard reduction in these specific instances.

**Amend § 1104.1(g)(15)(C)2.e. (formerly § 1104.1(a)(8)(C)2.e.)**

The proposed action requires that, following a change in ownership and certain failures to complete an exemption, a new Timberland owner is required to provide notification to the Director within a certain period of time that certain conditions were satisfied. The purpose of this amendment is to clarify the necessary disclosure on the part of the Timberland owner. The Department does not require a report on those activities in order to ensure compliance and enforcement, simply whether or not those activities were completed. This amendment is necessary to clarify how certain disclosure may occur and uses more plain language to achieve such clarification.

**Amend former § 1104.1(b) through (g)**

The proposed action relocates the existing provisions of 14 CCR §§ 1104.1(b) through (g)(4)(B) to the newly adopted 14 CCR § 1114. The purpose of this amendment is to promote the restructuring of the regulations and is necessary in order to improve their clarity and implementation.

**Amend former § 1104.1(h)**

The proposed action relocates the existing provision of 14 CCR §§ 1104.1(h) to the restructured 14 CCR § 1101.1(g)(7). The purpose of this amendment is to promote the restructuring of the regulations and is necessary in order to improve their clarity and implementation.

**Amend § 1104.1(g)(17) (formerly § 1104.1(i))**

The proposed action relocates the portion of the un-lettered preamble from 14 CCR § 1104.1 related to the harvesting of large and old trees to other provisions related to such harvesting. In addition to this relocation, the proposed action requires certification by an RPF or professionally certified arborist that one of the designated criteria for removal has been satisfied, rather than requiring “explanation and justification” as previously identified. The purpose of this amendment, other than improving the structural clarity of the regulations, improves the consistency of the permitting process. As currently and proposed, the regulations require that, upon determining that a notice of conversion exemption is complete and accurate, the Director shall accept the notice and the permit is granted as described within 14 CCR § 1104.1(d). This process does not provide accommodation for the review of an explanation and justification, and as long as such content existed, it would satisfy these conditions. Furthermore, the conditions for removal as identified in 1., 2., and 3. of the paragraph, are prescriptive to the point that further “explanation and justification” are unnecessary and potentially burdensome to the permitting process. The requirement for simple certification in this instance provides a consistent level of disclosure which can be verified as complete and accurate, and provides the same level of commitment to the satisfaction of the conditions for removal. This amendment is necessary to clarify this revised process of disclosure to promote accurate implementation of the regulations.

Additionally, within 14 CCR § 1104.1(g)(17)(B)3., the date by which a tree must be dead or likely to die to permit removal under the paragraph is defined as one year from the

date of submission of the notice of conversion exemption to the Director. The purpose of this amendment is to provide a reasonably enforceable standard by which large and old trees may be removed. The previous standard of “one year from the date of proposed removal” is overly vague and would be impossible to enforce, provided that the date for scheduled removal is not provided within the regulations and if it were included would present additional requirements for enforcement and disclosure. The proposed amendment provides a clear timeline for both the regulated public and the Department to implement and enforce the removal of large old trees consistent with this provision.

**Amend § 1104.1(g)(18)**

The proposed action requires that any timber operations conducted pursuant to 14 CCR §§ 1104.1 within the Lake Tahoe region to have a valid Tahoe Basin Tree Removal Permit, as defined by the Tahoe Regional Planning Authority (TRPA), or be conducted under a valid TRPA memorandum of understanding, when such a permit is required by TRPA. The purpose of this amendment is to maintain consistency with TRPA standards for tree removal activities within TRPA jurisdiction. TRPA has an existing and functional permitting process to ensure that tree removal activities within their jurisdiction complies with their standards and requirements and is authorized by PRC § 4516. Similar requirements exist for exemption activities pursuant to 14 CCR § 1038 and 1038.3 within 1038.1(b) and 1038.3(n), respectively, and are authorized and required by PRC § 4584.1(f) and 4584.2(f).

**Amend § 1104.1(g)(19)**

The proposed action prohibits Tractor Operations and heavy equipment operations on known Unstable Areas. The purpose of this amendment is to prevent unintended environmental damage which may result from earth movement related to instability, as well as to promote compliance and consistency with existing regulatory requirements within 14 CCR §§ 914.2(d), 934.2(d) and 954.2(d), which prohibit such activities unless under certain conditions which require approval by the Director. Provide the review and acceptance standards described within 14 CCR § 1104.1(d), there is not an opportunity for the Director to make such an approval. The adoption of the regulations here is necessary to clarify this prohibition to ensure compliance for activities conducted pursuant to this section.

**Amend § 1104.1(g)(20)**

The proposed action allows for an extension for the timelines of completion of Timber Operations and conversion activities described within 14 CCR s 1104.1(g)(1) and (2) under the condition that certain certifications be made. The purpose of these extensions are to provide additional flexibility, where needed, to landowners in effectuating conversion activities and Timber Operations pursuant to this section. Similar timelines for the extension of Timber Operations are provided by PRC § 4590(a)(2) and are suitable and appropriate here provided that additional time may be necessary to complete exemption activities as in Plan activities. The amendment here is necessary to clarify the terms and conditions of this extension.

### **Adopt Article 8 Utility and Public Agency Exemptions**

The proposed action re-locates the existing regulatory exemptions provided by 14 CCR § 1104.1(b) and (c), which are authorized by PRC § 4584(a) and 4628(a), respectively, into a new Article in order to improve the structure and clarity of the regulations.

Provided that these activities are distinct in nature from those conducted under a less than 3-acre exemption pursuant to 14 CCR § 1104.1, it is appropriate to distinguish them, and their conditional elements, within their own Article. The regulations relocate many provisions and amend others. Please see discussion of individual provisions below for additional information.

### **Adopt § 1114(a)**

The proposed action relocates and modifies provisions from the un-lettered preamble of 14 CCR § 1104.1 in the existing regulations related to exemptions from, and applicability of, portions of the Act and Rules. The purpose of this revision is to clarify the general scope of application of the Act and Rules to the Timber Operations and activities conducted pursuant to this section. This amendment is necessary to clarify this scope of applicability in order to support the implementation and enforcement of the regulations

The subsection additionally relocates existing provisions of 14 CCR § 1104.1(b) and (c) related to right-of-way exemptions. The purpose of this amendment is to support the restructuring of the regulations into the newly created Article 8. This amendment is necessary to clarify and support this restructuring.

### **Adopt § 1114(a)(2)(A)**

The proposed action provides that all construction of a public or private utility right-of-way as described in 14 CCR § 1114(a)(2) (previously 14 CCR § 1104.1(c)) is subject to all requirements of the section, as are certain maintenance and repair activities of those rights-of-way which do not satisfy all criteria for the exemption described in 14 CCR § 1114(a)(2)(B). The purpose of this amendment is to clarify that, while an exemption is provided in 14 CCR § 1114(a)(2)(B) for certain activities, that construction activities, and any repair or maintenance activities which do meet all criteria of the exemption, are not subject to the exemption. This amendment is necessary to clarify the applicability and scope of the exemption provided by 14 CCR § 1114(a)(2)(B) and discussed below.

### **Adopt § 1114(a)(2)(B)**

The proposed action provides an exemption (in addition to those provided by 14 CCR § 1114(a)) from subsections (b) through (g) of this section, with certain conditions, as well as all operational provisions of the Act and Rules for certain maintenance and repair activities for a public or private utility right-of-way for activities which occur subsequent to the initial completion or construction of those rights-of-way. The exemption applies to the cutting or removal of trees located within the width, and consistent with the terms, of the public or private utility's legally recorded easement and is not to exceed the total regulatorily specified widths for those rights-of-way, without opportunity to utilize regulatory embiggening provisions. The purpose of this exemption is to provide regulatory relief for those activities which are minimal in their ability to cause conflicts or

issues with the goals and purposes of the Act and Rules, and are similarly unlikely to have an impact on the environment. The purpose of the limitation of applicability of the exemption to certain activities within the width, and consistent with the terms, of a utility's legally recorded easement, and bounded by the existing standard regulatory widths, is to ensure that exempt operations occur only in those areas where the utility has an existing documented power to do so, and that while those widths may exceed those described in regulation, that those regulatory maximum widths are the limit to what is considered *de minimis* per these regulations. This amendment is necessary in order to clarify and make specific this exemption, which is authorized by PRC § 4584(a).

**Adopt § 1114(b)**

The proposed action requires that the notice required for submission to conduct Timber Operations pursuant to 14 CCR § 1114 must be prepared by an RPF on a form prepared the Department and submitted prior to the commencement of Timber Operations. These purpose of this amendment is to clarify the format and timing by which the notice must be submitted, as well as the requirement that a notice be prepared by an RPF. These amendments are necessary to adequately implement the requirements surrounding the notice by the regulated public, and to provide appropriate review and enforcement of those provisions by the Department, as well as to ensure RPF involvement in the notice preparation process to ensure compliance with the Act and Rules and adequate protection of resources.

**Adopt § 1114(b)(1)**

The proposed action requires that a notice submitter include what type of exemption is being sought on the form described in 14 CCR § 1114(b). The purpose of this amendment is to require disclosure of activities and is necessary in order to promote accurate and appropriate implementation and enforcement of the regulations.

**Adopt § 1114(b)(2)**

The proposed action requires that a notice of right-of-way exemption pursuant to this section include certain contact and identification information for the Timberland owner, RPF, LTO, and submitter of the notice of the right-of-way exemption. The purpose of this amendment is to provide the Department accurate contact information for these parties an, especially provided that, though they are required to be prepared by an RPF, right-of-way exemptions are generally prepared on behalf of utilities, who may choose to submit the notices. This information necessary to ensure appropriate and accurate implementation and enforcement of these regulations.

**Adopt § 1114(b)(3)**

The proposed action requires that a notice of right-of-way exemption pursuant to this section include a legal description of the location of the timber Operation, as well as the county, and assessor parcel number. The purpose of this amendment is to clarify the required submission information necessary to accurately identify where operations are taking place, as well as to eliminate redundant requirements to show section, township, and range, which is information which is inclusive of a legal description. These amendments are necessary to accurately implement and enforce these regulations.

**Adopt § 1114(b)(4)**

The proposed action requires a map to be submitted with a notice of right-of-way exemption pursuant to this section, as well as to provide additional standards related to the map. The requirement to submit a 7 ½ minute USGS quadrangle map or its equivalent is an existing requirement of 14 CCR § 1038.2(a), and the Board has implemented this requirement as it is suitable and appropriate for use in disclosing the operations permitted here, which are similar in scope to many of the exemptions provided by 14 CCR § 1038, for which the existing requirement applies. The proposed action further clarifies the minimum scale of the map to be used as the potential maximum scope of operations pursuant to this section in order to provide meaningful mapping and disclosure of operations. The amendment also provides that additional maps are also allowable for submission, including digital shapefile information, if they are able to improve map clarity and their standards and conditions are additionally specified within this amendment. Furthermore, the use of color coding is prohibited, a legend is required to be submitted on a map, and, if more than one yarding system is used, the yarding systems are to be specified and mapped. Similar standards exist within 14 CCR § 1038.2, and are suitable here to provide an adequate level of mapping disclosure. These amendments are necessary in order to clarify the requirements for maps which are submitted for this conversion exemption and to provide flexibility to the submitter in the preparation of the maps.

Additionally, the proposed action requires that the maps described above contain certain information and details. These details and requirements exist as potential requirements for disclosure within 14 CCR § 1038.2 and PRC § 4584.1(a) and are suitable and appropriate here to provide adequate disclosure of conversion exemption activities in order to ensure compliance with, and enforcement of, these regulations. The clarification of these requirements is necessary to promote appropriate disclosure of activities conducted pursuant to this section and, ultimately, promote compliance and enforcement with these regulations.

**Adopt § 1114(b)(5)**

The proposed action requires that a notice of right-of-way exemption pursuant to this section include the tentative date of commencement of Timber Operations. The purpose of this amendment is to clarify what information must be submitted on the notice, and is necessary to aid in the application and enforcement of the regulations by the Department and to provide the Department knowledge of when these activities are likely to occur to aid in enforcement of the regulations. Similar standards exist within 14 CCR § 1038.1(a)(6) and are suitable and appropriate here provided the similarity in scope between the activities authorized within this section and those activities permitted pursuant to 14 CCR § 1038, to which 14 CCR § 1038.1(a)(6) applies.

**Adopt § 1114(b)(6)**

The proposed action requires the submission of certain documentation which may be required by 14 CCR § 1114(f)(8). Other adopted regulations within 14 CCR § 1114(f)(8) provide that certain Timber Operations may occur with written concurrence from a

Department Archaeologist and that that written concurrence be submitted with the notice of conversion exemption. The purpose of the amendment is to reiterate that requirement under the information to be submitted with the notice of 14 CCR § 1114(b). This amendment is necessary to promote clarity and consistency within the regulations and to ensure their appropriate implementation via appropriate identification of required submission materials in a single subsection.

**Adopt § 1114(b)(7)**

The proposed action requires the submission of certain documentation which may be required by 14 CCR § 1114(f)(13). The proposed amendments within 14 CCR § 1114(f)(13), and similar requirements in existing regulations within 14 CCR § 1104.1 (i) provide that the removal of certain large and old trees may occur under certain conditions, including certain certifications. The purpose of the amendment is to reiterate that requirement under the information to be submitted with the notice of 14 CCR § 1114(b). This amendment is necessary to promote clarity and consistency within the regulations and to ensure their appropriate implementation via appropriate identification of required submission materials in a single subsection.

**Adopt § 1114(b)(8)**

The proposed action requires the submission of certain documentation which may be required by 14 CCR § 1114(f)(13). The proposed amendments within 14 CCR § 1114(f)(13) provide that the removal of certain Danger Trees may occur under certain conditions, including certain certifications. The purpose of the amendment is to reiterate that requirement under the information to be submitted with the notice of 14 CCR § 1114(b). This amendment is necessary to promote clarity and consistency within the regulations and to ensure their appropriate implementation via appropriate identification of required submission materials in a single subsection.

**Adopt § 1114(b)(9)**

The proposed action requires that signatures from the notice of right-of-way exemption submitter, LTO, and RPF be included within the notice of right-of-way exemption form as described by 14 CCR § 1114(b). The purpose of this amendment is to ensure that all parties involved with timber harvesting activities pursuant to this section verify their involvement in this process. This amendment is necessary to clarify this signature requirement of these parties.

**Adopt § 1114(c)**

The proposed action provides the timelines and actions of review of a notice of right-of-way exemption by the Director. The purpose of this amendment is to clarify these timelines and actions on the part of the Director in order to promote a more transparent and minimally burdensome regulatory permitting process. Similar standards for review exist within 14 CCR § 1038.1(c)(13) and are suitable and appropriate here due to the similar ministerial nature of activities conducted pursuant to both 14 CCR §§ 1038 and 1114. This amendment is necessary to clarify these timelines and standards of review for the implementation and enforcement of these regulations.

**Adopt § 1114(d)**

The proposed action requires that the Department provide copies of the submitted notice of right-of-way exemption to the appropriate Regional Water Quality Control Boards, Department of Fish and Wildlife, and California Geologic Survey offices upon acceptance the notice. This provision is an implementation of PRC § 4584.1(h), which the Board found suitable and appropriate for application to the exempt activities within this section to allow for adequate disclosure of the exemption activities to agencies which may have authority related to certain forest management activities associated with timber operations conducted pursuant to 14 CCR § 1114. The proposed action requires that other agencies be notified upon acceptance, rather than upon submission as identified within PRC § 4584.1(h) as many notices may be submitted and not accepted, resulting in unnecessary notification to additional agencies. This adoption is necessary to clarify this requirements to both the CAL FIRE and the regulated public and to aid in their application and enforcement.

**Adopt § 1114(e)**

The proposed action prohibits an LTO from conducting Timber Operations until receipt of the Director's notice of acceptance and further prohibits Timber Operations from being conducted without a copy of the notice of acceptance and a copy of the right-of-way exemption, as filed with the Director, on site. The purpose of this amendment is to ensure that the LTO, who is responsible for conducting on-the-ground operations, does not engage in those operations prior to acceptance and is aware of the conditions and limitations of the operations as accepted by the director. Similar requirements exist within 14 CCR § 1104.1(a)(2)(G) and are suitable and appropriate here to ensure awareness of the LTO for right-of-way exemption Timber Operations. This amendment is necessary to clarify these prohibitions and requirements.

**Adopt § 1114(f)**

The proposed action adopts a table which identifies the applicability of subsequent operational conditions to the types of right-of-way exemption identified in 14 CCR § 1114(a)(1) and (2). The purpose of this amendment is to provide adequate clarity regarding this applicability and eliminate unnecessary redundancy in the regulatory text which may be necessary to describe applicability on a provision-by-provision basis. Within the table, 14 CCR §§ 1114(f)(1)-(19) are applicable to both types of right-of-way exemption as those conditions are suitable due to operational similarities of the two exemptions, but conditions 14 CCR §§ 1114(f)(20)-(23) are exclusive to public and private utility right-of-way exemptions. Please see the descriptions of those specific provisions below for suitability information. The amendments here are necessary to provide clarity regarding these conditions for the appropriate implementation and enforcement of these regulations.

**Adopt § 1114(f)(1)**

The proposed action requires that all Timber Operations conducted pursuant to 14 CCR § 1114 be completed within 1 year from the date of acceptance by the Director. This is a common timeframe for ministerial permits for Timber Operations within the Rules, and similar requirements exist within 14 CCR §§ 1038 and 1052(e) for those ministerially

permitted activities and are suitable and appropriate here for these similarly permitted activities and are necessary to achieve a suitable and appropriate temporal scope of activities which implement these regulations.

**Adopt § 1114(f)(2)**

The proposed action requires that an RPF or their Supervised Designee flag the boundaries of the Harvest Area and any applicable WLPZs and ELZs. The purpose of this amendment is to ensure that these environmentally sensitive areas are appropriately identified and designated for the restriction of operations by a Professional Forester, or their Supervised Designee, and to ensure general compliance with the Act and Rules, consistent with the incorporation of the RPF into the notice preparation process as described in 14 CCR § 1104.1(b). This amendment is necessary to achieve appropriate compliance with the Act and Rules and to ensure that the resource protection requirements of the Act are achieved.

**Adopt § 1114(f)(3)**

The proposed action requires that certain surface fuels resulting from right-of-way exemption Timber Operations receive certain treatment within a certain time frame. These amendments are necessary to clarify treatment requirements and to appropriately implement and enforce them.

**Adopt § 1114(f)(3)(A)**

The proposed action requires that certain surface fuels created by Timber Operations and brush within a certain distance of certain structures be chipped, burned, or removed within 45 days from the date of its creation. The purpose of this amendment is to achieve suitable reduction of fire hazards around those structures where human habitation occurs. Similar standards for fuel treatment exist within 14 CCR § 1038(c)(3) and are suitable and appropriate here to achieve a similar level of fuel hazard reduction within a reasonable time frame. This amendment is necessary to clarify this prescriptive standard and achieve abatement of hazards in these areas.

**Adopt § 1114(f)(3)(B)**

The proposed action requires that Slash resulting from right-of-way exemption Timber Operations that are 150 feet or more from those structures described above be treated to a maximum post-harvest depth of 18 inches above ground, and imposes certain requirements for the treatment methods and timing. The purpose of this amendment is to achieve suitable reduction of fire hazards resulting from Timber Operations conducted pursuant to this section outside of those areas surrounding structures intended for human habitation, as defined. Similar standards for fuel treatment requirements exist within 14 CCR § 1038.3(d)(1) and PRC § 4584.2(d) and are suitable and appropriate here to achieve a similar level of fuel hazard reduction within a reasonable time frame. This amendment is necessary to clarify this prescriptive standard and achieve abatement of hazards in these areas.

**Adopt § 1114(f)(4)**

The proposed action identifies that Timber Operations for right-of-way exemption activities pursuant to this section may be conducted during the Winter Period (as defined in 14 CCR § 895.1), and imposes certain prescriptive requirements on those operations. The purpose of this amendment is to ensure environmental quality during Timber Operations conducted during the Winter Period, where additional precipitation throughout the state has the potential to result in increased transportation of sediment across the landscape and, ultimately increase the potential for damage. Similar standards exist within the amended 14 CCR § 1104.1(g)(5) for conversion exemption activities which may be necessary to conduct year-round, and are suitable and appropriate for right-of-way exemption construction and maintenance activities which similarly may be necessary to conduct year-round. This amendment is necessary to clarify these standards and restrictions for the implementation and enforcement of these regulations.

**Adopt § 1114(f)(5)**

The proposed action prohibits Timber Operations in a Watercourse and Lake Protection Zone (as defined within 14 CCR § 895.1) for operations conducted pursuant to this section. Similar prohibitions exist within 14 CCR §§ 916.9(s), 936.9(s), and 956.9(s) to ensure environmental quality during Timber Operations conducted in sensitive watersheds with Anadromous Salmonids and provide a suitable level of environmental protection for operations conducted pursuant to this section statewide. The similar prohibitions in 14 CCR § 916.9(s), 936.9(s), and 956.9(s) provide an exception for “operations conducted for public safety”, which has been clarified here as pertaining to the removal of Danger Trees. These amendments are necessary to clarify these regulatory exceptions and promote appropriate implementation and enforcement of these regulations.

**Adopt § 1114(f)(6)**

The proposed action moves and restructures the existing provision of 14 CCR § 1104.1(h). The purpose of this amendment is to promote the restructuring of the regulations and is necessary in order to improve their clarity and implementation. The proposed action additionally identifies that those previously excepted activities in 14 CCR § 1114(f)(5), described above, are not included in the existing prohibition in order to avoid any inconsistency in the regulations.

**Adopt § 1114(f)(7)**

The proposed action prohibits Timber Operations conducted pursuant to this section from disturbing, threatening, or damaging sites of rare, threatened, or endangered plants or animals, or from occurring within the Buffer Zone of a Sensitive Species as defined by 14 CCR § 895.1. The purpose of this provision is to prevent Timber Operations from negatively affecting those resources described above through an outright prohibition of damaging activities. Such a prohibition exists within 14 CCR § 1104.1(a)(2)(H) for other ministerially permitted activities and is suitable and appropriate to provide resource protection for these similarly ministerially permitted activities. This

amendment is necessary to clarify this prohibition and to promote the implementation and enforcement of these regulations.

**Adopt § 1114(f)(8)**

The proposed action prohibits Timber Operations conducted pursuant to this section on certain Archaeological or Historical Sites except under explicit conditions. The purpose of this amendment is to protect these Archaeological or Historical Sites from potential damage resulting from Timber Operations, as well as to provide a mechanism to provide protection where avoidance may not be possible due to the existing location of right-of-way features. Similar resource protection measures exist within 14 CCR § 1104.1(a)(2)(l) for ministerially permitted activities and are suitable and appropriate here for the similarly ministerially permitted operations described in this section. This amendment is necessary to clarify this restriction and condition requirements.

**Adopt § 1114(f)(9)**

The purpose of the proposed action is to require that an RPF comply with 14 CCR § 1035.2 relating to interaction between the LTO and the RPF for activities conducted pursuant to 14 CCR § 1114. This section outlines requirements and timelines for RPF and LTO responsibilities and disclosures. The requirements of 14 CCR § 1114 are somewhat complex and may lead to issues or conflict between RPFs and LTOs and this requirement for compliance with 14 CCR § 1035.2 is necessary to provide some structure and required disclosure to avoid those conflicts. This adoption is additionally consistent with PRC § 4584 (k)(7)(G). This adoption is necessary to clarify this requirement to both the RPF and the LTO.

**Adopt § 1114(f)(10)**

The proposed action requires that, prior to the commencement of Timber Operations conducted pursuant to this section, the LTO must notify the Department of the actual date of commencement of operations, and includes requirements and conditions related to such notification. The purpose of this amendment is to ensure that appropriate disclosure of activities occurs in order to provide the Department with awareness of those activities and the opportunity to inspect or engage in regulatory enforcement related to those activities. Similar disclosure requirements exist within 14 CCR § 1104.1(a)(2)(K) for ministerially permitted activities and are suitable and appropriate here for the similarly ministerially permitted operations described in this section. This amendment is necessary to clarify this restriction and condition requirements.

**Adopt § 1114(f)(11)**

The proposed action requires that, within one month from the completion of Timber Operations conducted pursuant to this section, the submitter of the notice of right-of-way exemption must submit a work completion report to the Director. The purpose of this amendment is to provide timely disclosure of these activities to the Department to improve the efficiency and coordination of the regulatory enforcement duties of the Department. Similar disclosure requirements exist within 14 CCR § 1104.1(a)(5) for ministerially permitted activities and are suitable and appropriate here for the similarly ministerially permitted operations described in this section.

Additionally, the proposed action requires that, upon receipt of the work completion report, the Director must transmit a copy of the report to the appropriate Regional Water Quality Control Board, Department of Fish and Wildlife, and California Geological Survey. The purpose of this amendment is to provide timely disclosure of these activities to those agencies who have jurisdiction over certain activities or resources which may be related to or affected by the Timber Operations conducted pursuant to this section in order to improve the efficiency and coordination of the regulatory enforcement duties of those agencies. This amendment is necessary to clarify this disclosure requirement to the Director.

**Adopt § 1114(f)(12)**

The proposed action provides that the Department may provide for inspection, as needed, to determine that conversion activities are completed. The purpose of this amendment is to clarify the discretionary inspection authority of the Department and when those inspections should occur. The act of inspection may or may not be necessary in order to adequately enforce the forest practice regulations and should be implemented as necessary in order to provide for efficient utilization of Department resources. This amendment is necessary in order to clarify these inspection requirements.

**Adopt § 1114(f)(13)**

The proposed action relocates the portion of the un-lettered preamble from 14 CCR § 1104.1 related to the harvesting of large and old trees to other provisions related to such harvesting. In addition to this relocation, the proposed action requires certification by an RPF or professionally certified arborist that one of the designated criteria for removal has been satisfied, rather than requiring “explanation and justification” as previously identified. The purpose of this amendment, other than improving the structural clarity of the regulations, improves the consistency of the permitting process. As currently and proposed, the regulations require that, upon determining that a notice of conversion exemption is complete and accurate, the Director shall accept the notice and the permit is granted as described within 14 CCR § 1114(c). This process does not provide accommodation for the review of an explanation and justification, and as long as such content existed, it would satisfy these conditions. Furthermore, the conditions for removal as identified in 1., 2., and 3. of the paragraph, are prescriptive to the point that further “explanation and justification” are unnecessary and potentially burdensome to the permitting process. The requirement for simple certification in this instance provides a consistent level of disclosure which can be verified as complete and accurate, and provides the same level of commitment to the satisfaction of the conditions for removal. This amendment is necessary to clarify this revised process of disclosure to promote accurate implementation of the regulations.

Additionally, within 14 CCR § 1114(f)(13)(B)3., the date by which a tree must be dead or likely to die to permit removal under the paragraph is defined as one year from the date of submission of the notice of conversion exemption to the Director. The purpose of this amendment is to provide a reasonably enforceable standard by which large and old

trees may be removed. The previous standard of “one year from the date of proposed removal” is overly vague and would be impossible to enforce, provided that the date for scheduled removal is not provided within the regulations and if it were included would present additional requirements for enforcement and disclosure. The proposed amendment provides a clear timeline for both the regulated public and the Department to implement and enforce the removal of large old trees consistent with this provision.

**Adopt § 1114(f)(14)**

The proposed action requires that any timber operations conducted pursuant to 14 CCR § 1114 within the Lake Tahoe region to have a valid Tahoe Basin Tree Removal Permit, as defined by the Tahoe Regional Planning Authority (TRPA), or be conducted under a valid TRPA memorandum of understanding, when such a permit is required by TRPA. The purpose of this amendment is to maintain consistency with TRPA standards for tree removal activities within TRPA jurisdiction. TRPA has an existing and functional permitting process to ensure that tree removal activities within their jurisdiction complies with their standards and requirements and is authorized by PRC § 4516. Similar requirements exist for exemption activities pursuant to 14 CCR § 1038 and 1038.3 within 1038.1(b) and 1038.3(n), respectively, and are authorized and required by PRC § 4584.1(f) and 4584.2(f).

**Adopt § 1114(f)(15), (16), (17), and (18)**

The proposed action places prescriptive limitations on right-of-way exemption Timber Operations. The purpose of these limitations is prevention of environmental damage which may occur as a result of activities occurring in areas which are either sensitive or prone to environmental damage. Similar prescriptive limitations to 14 CCR §§ 1114(f)(15), (16), (17), and (18) exist within 14 CCR §§ 1038.1(c)(5), (6), and (7) for nearly all ministerially permitted Timber Operations conducted pursuant to 14 CCR § 1038, and are suitable and appropriate for the ministerially permitted Timber Operations pursuant to this section to provide similar environmental protection. This amendment is necessary to clarify these operational restrictions to promote appropriate implementation and enforcement of these regulations.

**Adopt § 1114(f)(19)**

The proposed action describes the requirements for identification and certification, as well as conditions for removal, of Danger Trees for timber operations conducted pursuant to this section. The purpose of these amendments is to verify that those trees which are identified as Danger Trees outside of the right-of-way widths described within this section are do so by appropriate professionals and that the process is appropriately documented and disclosed by those professionals. The adoption allows that an RPF, their Supervised Designee, or a professionally certified arborist need not submit certain certifications related to the definition of Danger Tree if that tree is already proposed for removal in compliance with the standards of an existing Habitat Conservation Plan, Sustained Yield Plan, or other Plan (as defined by 14 CCR § 895.1). The purpose of this adoption is similarly to verify that trees which may be Danger Trees are identified and removed appropriately and in compliance with existing permitting conditions. These amendments are necessary to clarify the requirements of identification, certification, and

conditions for removal of such Danger Trees to aid in the implementation and enforcement of these regulations.

**Adopt § 1114(f)(20) through (23)**

The proposed action relocates the existing provisions of 14 CCR §§ 1104.1(b) through (g)(4)(B) to the newly adopted 14 CCR § 1114(f)(20) through (23)(D)3.. The purpose of this amendment is to promote the restructuring of the regulations and is necessary in order to improve their clarity and implementation.

Furthermore, these regulations are exclusively related to utility right-of-way exemptions as designated by 14 CCR §§ 1114(a)(2) and (f) and provided that the subject of these provisions is exclusive to utility-related Timber Operations.

**Adopt § 1114(f)(24)**

The proposed action prohibits, to the extent Feasible (as defined per 14 CCR § 895.1), a public or private utility who is not the Timber Owner, from materially impairing the ability of the landowner or Timber Owner to sell, barter, exchange, or trade those trees felled by Timber Operations pursuant to this section, unless otherwise provided for by a legally recorded easement or other written agreement with landowner or Timber Owner. The purpose of this amendment is to promote the commercial productivity of Timberland, consistent with the goals of the Act within PRC § 4513, and provide landowners and Timber Owners an opportunity to recover the value of those trees which were felled as necessary to maintain utility infrastructure, while not restricting utility maintenance operations to the point of non-Feasibility. The adoption is necessary to clarify these conditions to the regulated public and Department to promote appropriate implementation and enforcement of these regulations.

Additionally, the proposed action requires that a public or private utility notify a landowner prior to the cutting or removal of trees located outside of a legally recorded easement and that evidence of such notification must be provided to the Director upon request. The purpose of this amendment is to ensure that landowners are made aware of potentially unanticipated cutting or removal of Danger Trees on land not covered by a utility's legally recorded easement and to provide an opportunity to recover the value of those trees in a timely manner, as well as to provide the Department a regulatory mechanism for enforcement of this provision. This amendment is necessary to provide clarity regarding this requirement and to further promote the goals of PRC § 4513.

**Adopt § 1114(g)**

The proposed action requires that a public or private utility, when engaged in Timber Operations pursuant to this section, must provide evidence compliance with certain requirements of PRC § 4295.5<sup>3</sup>. The purpose of this amendment is to establish a

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<sup>3</sup> PRC § 4295.5(a) Notwithstanding any other law, including Section 4295, any person who owns, controls, operates, or maintains any electrical transmission or distribution line may traverse land as necessary, regardless of land ownership or express permission to traverse land from the landowner, after providing notice and an opportunity to be heard to the landowner, to prune trees to maintain clearances pursuant to Section 4293, and to abate, by pruning or removal, any hazardous, dead, rotten, diseased, or

mechanism by which compliance with the self-executing provisions of PRC § 4295.5 related to noticing and an opportunity to be heard, may be identified by the Director in order to determine general compliance of Timber Operations conducted pursuant to this section with this extant state law. This amendment is necessary to clarify this potential disclosure requirement in order to evaluate and ensure compliance with state law.

### **Non-Substantive Amendments**

1. Capitalized and utilized terms defined pursuant to 14 CCR § 895.1 and this Article throughout the amendments where appropriate.
2. Made lower-case terms which were capitalized but not proper-nouns or undefined within applicable regulation or are not used consistent with their regulatory definition.
3. Re-structured existing regulatory structure to promote simple and more logical regulatory structure.
4. Largely numbered or lettered un-numbered or un-lettered provisions.
5. Included written and Arabic numbers where they exist.
6. Improved grammar and spelling throughout.
7. Update authority and reference citations.

### **ECONOMIC IMPACT ANALYSIS (pursuant to GOV § 11346.3(b)(1)(A)-(D) and provided pursuant to 11346.3(a)(3))**

The effect of the proposed action is a likely increase in the cost of preparation and administration of public and private utility right-of-way construction and maintenance exemptions, and public agency right of way construction and maintenance on public lands exemptions (those pursuant to the adopted 14 CCR § 1114) through new requirements for the utilization of Registered Professional Foresters in these processes, and revised mapping and notice preparation requirements.

### **Creation or Elimination of Jobs within the State of California**

The proposed action that an RPF prepare a notice of right-of-way exemption (notice) which includes certain field-based preparation requirements. Additionally, the proposed action includes certain new mapping and disclosure requirements and opportunity to utilize Registered Professional Foresters, their supervised designees, and consulting professionally certified arborists which will be necessary conduct field work and specific certifications. Though the firms which are generally contracted to perform such work are largely extant, it is anticipated that, due to the specific professional requirements, a certain number of those firms will expand their employee base around these positions. It is assumed that approximately 25 jobs may be created as a result of the proposed action, based on the number of submissions per year (approximately 300), and an assumed average length of preparation of an exemption (1 month). No jobs are anticipated to be eliminated.

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structurally defective live trees. The clearances obtained when the pruning is performed shall be at the full discretion of the person that owns, controls, operates, or maintains any electrical transmission or distribution line, but shall be no less than what is required in Section 4293. This section shall apply to both high fire threat districts, as determined by the California Public Utilities Commission pursuant to its rulemaking authority, and to state responsibility areas.

### **Creation of New or Elimination of Businesses within the State of California**

The proposed action requires that an RPF prepare a notice which includes certain field-based preparation requirements. Additionally, the proposed action includes certain new mapping and disclosure requirements. The types of businesses that will be affected are privately owned utilities which file exemptions pursuant to revised 14 CCR § 1114, as well as those consulting Registered Professional Foresters, their supervised designees, and consulting professionally certified arborists which will be necessary to prepare the notices and conduct field work and specific certifications. Due to the fact that the majority of the costs associated with the proposed action will be borne by these private utilities, it is assumed that only 20% of businesses affected will be small.

### **Expansion of Businesses Currently Doing Business within the State of California**

Due to long-term stability in the field of utility ownership and the fact that firms which are contracted to do such work are largely extant in the field, it is not anticipated that the proposed regulation will result in the expansion or contraction of businesses currently doing business within the State.

### **Benefits of the Regulations to the Health and Welfare of California Residents, Worker Safety, and the State's Environment**

The benefit of the proposed action is the maintenance of a comprehensive regulatory scheme which allows for the clear and consistent application and enforcement of the Forest Practice Rules related to less than 3-acre or less, or right-of-way construction and maintenance exemptions. These measures may benefit environmental quality throughout the state through improved clarity regarding prohibitions and limitations related to Timber Operations which are intended to prevent environmental impact. Additionally, the improvement of notification processes will benefit the efficiency of the Departments inspections and enforcement of exemption operations.

### **Business Reporting Requirement (pursuant to GOV § 11346.5(a)(11) and GOV § 11346.3(d))**

The proposed action does impose a minor completion reporting requirement in 14 CCR § 1114(f)(11), where there is a requirement to submit a report to the Director within 1 month of the completion of Timber Operations. This report is necessary to provide an appropriate awareness of activities and a timeline for inspection of those activities on the part of the Department. Such inspections are necessary in order to determine compliance with the Act and Rules, which are intended to maintain environmental quality and prevent hazardous forest conditions or wildfires and is ultimately necessary for the safety of the people and property of the state of California.

### **STATEMENTS OF THE RESULTS OF THE ECONOMIC IMPACT ASSESSMENT (EIA)**

The results of the economic impact assessment are provided below pursuant to **GOV § 11346.5(a)(10)** and prepared pursuant to **GOV § 11346.3(b)(1)(A)-(D)**. The proposed action:

- May create jobs within California (GOV § 11346.3(b)(1)(A)).

- Will not eliminate jobs within California (GOV § 11346.3(b)(1)(A)).
- Will not create new businesses (GOV § 11346.3(b)(1)(B)).
- Will not eliminate existing businesses within California (GOV § 11346.3(b)(1)(B)).
- Will not affect the expansion or contraction of businesses currently doing business within California (GOV § 11346.3(b)(1)(C)).
- Will yield nonmonetary benefits (GOV § 11346.3(b)(1)(D)). For additional information on the benefits of the proposed regulation, please see anticipated benefits found under the “Introduction Including Public Problem, Administrative Requirement, or Other Condition or Circumstance the Regulation is Intended to Address”.

**TECHNICAL, THEORETICAL, AND/OR EMPIRICAL STUDY, REPORT, OR SIMILAR DOCUMENT RELIED UPON (pursuant to GOV SECTION 11346.2(b)(3))**

The Board of Forestry and Fire Protection relied on the following list of technical, theoretical, and/or empirical studies, reports or similar documents to develop the proposed action:

1. 14 CCR § 1104.1(b) and (c) submission data for from January 1, 2019 through January 1, 2021, CalTREES. Downloaded February 24, 2021.
2. California Power Line Fire Prevention Field Guide, 2020 Edition. California Department of Forestry and Fire Protection and California Public Utilities Commission, 2020.
3. California Power Line Fire Prevention Field Guide, 2008 Edition. California Department of Forestry and Fire Protection and California Public Utilities Commission, November 2008
4. Utility Best Management Practices, Tree Risk Assessment and Abatement for Fire Prone States and Provinces in the Western Region of North America. Utility Arborist Association and Tree Fund. Powerpoint Presentation, August 28, 2009.
5. RM-73 Form: Public Agency, Public and Private Utility Right of Way Exemption State of California Department of Forestry and Fire Protection, November, 2020.
6. Industrial Operations Fire Prevention Field Guide, 2020 Edition (DRAFT). California Department of Forestry and Fire Protection. 2020.
7. Field Guide for Danger Tree Identification and Response. United States Department of Agriculture, Forest Service, Pacific Northwest Region and United States Department of Interior, Bureau of Land Management, 2005.
8. Hazard Tree Guidelines For Forest Service Facilities and Roads in the Pacific Southwest Region. Peter A. Angwin, Daniel R. Cluck, Paul J. Zambino, Brent W.

Oblinger and William C. Woodruff. Forest Health Protection, Pacific Southwest Region, April 2012 (Report #RO-12-01)

9. USDA/Forest Service Health and Safety Code Handbook: FSH 6709.11 : Danger Tree.

**REASONABLE ALTERNATIVES TO THE PROPOSED ACTION CONSIDERED BY THE BOARD, IF ANY, INCLUDING THE FOLLOWING AND THE BOARD'S REASONS FOR REJECTING THOSE ALTERNATIVES (pursuant to GOV § 11346.2(b)(4)(A) and (B)):**

- **ALTERNATIVES THAT WOULD LESSEN ANY ADVERSE IMPACTS ON SMALL BUSINESS AND/OR**
- **ALTERNATIVES THAT ARE LESS BURDENSOME AND EQUALLY EFFECTIVE IN ACHIEVING THE PURPOSES OF THE REGULATION IN A MANNER THAT ENSURES FULL COMPLIANCE WITH THE AUTHORIZING STATUTE OR OTHER LAW BEING IMPLEMENTED OR MADE SPECIFIC BY THE PROPOSED REGULATION**

Pursuant to **GOV § 11346.2(b)(4)**, the Board must determine that no reasonable alternative it considers, or that has otherwise been identified and brought to the attention of the Board, would be more effective in carrying out the purpose for which the action is proposed, would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

**Alternative 1: No Action Alternative**

The Board considered taking no action, but this alternative was rejected because it would not address the problem.

**Alternative #2: Make regulation less prescriptive**

This action would replace the existing prescriptive regulations related to Timber Operations conducted pursuant to 14 CCR § 1104.1. This action would create issues related to the preservation of environmental quality with regards to the ministerial permitting of certain timber harvesting operations and could lead to issues of clarity surrounding implementation and enforcement of the regulations. This alternative may reduce clarity and consistency with other portions of the rules which rely upon the existence of the current operational limitations in order to ensure that forest resources are preserved.

**Alternative #3: Proposed Action**

Alternatives 1 and 2 would not be more effective or equally effective while being less burdensome or impact fewer small businesses than the proposed action. Specifically, alternatives 1 and 2 would not be less burdensome and equally effective in achieving the purposes of the regulation in a manner that ensures full compliance with the authorizing statute or other law being implemented or made specific by the proposed regulation.

Additionally, alternatives 1 and 2 would not be more effective in carrying out the purpose for which the action is proposed and would not be as effective and less burdensome to affected private persons than the proposed action or would not be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law than the proposed action. Further, none of the alternatives would have any adverse impact on small businesses.

**Prescriptive Standards versus Performance Based Standards (pursuant to GOV §§11340.1(a), 11346.2(b)(1) and 11346.2(b)(4)(A)):**

Pursuant to **GOV §11340.1(a)**, agencies shall actively seek to reduce the unnecessary regulatory burden on private individuals and entities by substituting performance standards for prescriptive standards wherever performance standards can be reasonably expected to be as effective and less burdensome, and that this substitution shall be considered during the course of the agency rulemaking process.

The proposed action is as prescriptive as necessary to address the problem, and contain a mix of performance-based and prescriptive requirements. Current forest practice rules surrounding ministerially permitted conversion and right-of-way maintenance and construction activities are based in prescriptive minimum requirements for the protection of the states forest resources, which are necessary in order to accommodate for the levels of individual project review which occurs for various permitting vehicles for timber operations. The prescriptive regulations proposed in this action are necessary in order to provide adequate clarity within the regulations.

Pursuant to **GOV § 11346.2(b)(1)**, the proposed action does not mandate the use of specific technologies or equipment.

Pursuant to **GOV § 11346.2(b)(4)(A)**, the abovementioned alternatives were considered and ultimately rejected by the Board in favor of the proposed action. The proposed action does not mandate the use of specific technologies or equipment, but does prescribe specific actions.

**FACTS, EVIDENCE, DOCUMENTS, TESTIMONY, OR OTHER EVIDENCE RELIED UPON TO SUPPORT INITIAL DETERMINATION IN THE NOTICE THAT THE PROPOSED ACTION WILL NOT HAVE A SIGNIFICANT ADVERSE ECONOMIC IMPACT ON BUSINESS (pursuant to GOV § 11346.2(b)(5))**

The fiscal and economic impact analysis for these amendments relies upon contemplation, by the Board, of the economic impact of the provisions of the proposed action through the lens of the decades of experience practicing forestry in California that the Board brings to bear on regulatory development.

The proposed action will not have a statewide adverse economic impact directly affecting businesses. The proposed action does not mandate any action on behalf of those conducting timber operations, it simply clarifies how new technologies may be integrated into existing forest practice. There is one minor mapping requirement

included within the proposed action, however it is a minor portion of larger and more complex mapping requirements which are already extant for various permitting mechanisms. Additionally, this new requirement replaces previously existing requirements of disclosure which are similar in scope and any cost associated with this requirement is negligible.

**DESCRIPTION OF EFFORTS TO AVOID UNNECESSARY DUPLICATION OR CONFLICT WITH THE CODE OF FEDERAL REGULATION (pursuant to GOV § 11346.2(b)(6))**

The Code of Federal Regulations has been reviewed and based on this review, the Board found that the proposed action neither conflicts with, nor duplicates Federal regulations. There are no comparable Federal regulations related to conducting Timber Operations on private, state, or municipal forest lands.

**POSSIBLE SIGNIFICANT ADVERSE ENVIRONMENTAL EFFECTS AND MITIGATIONS CEQA**

CEQA requires review, evaluation and environmental documentation of potential significant environmental impacts from a qualified Project. Pursuant to case law, the review and processing of Plans has been found to be a Project under CEQA.

Additionally, the Board's rulemaking process is a certified regulatory program having been certified by the Secretary of Resources as meeting the requirements of PRC § 21080.5.

While certified regulatory programs are excused from certain procedural requirements of CEQA, they must nevertheless follow CEQA's substantive requirements, including PRC § 21081. Under PRC § 21081, a decision making agency is prohibited from approving a Project for which significant environmental effects have been identified unless it makes specific findings about alternatives and mitigation measures

Further, pursuant to PRC § 21080.5(d)(2)(B), guidelines for the orderly evaluation of proposed activities and the preparation of the Plan or other written documentation in a manner consistent with the environmental protection purposes of the regulatory program are required by the proposed action and existing rules.

The proposed action represents clarification of the state's existing comprehensive Forest Practice Program, under which all commercial timber harvest activities are regulated, through the adoption of additional established environmental protection measures. The Rules which have been developed to address potential impacts to forest resources, including both individual and cumulative impacts, project specific mitigations along with the Department oversight (of rule compliance) function expressly to prevent the potential for significant adverse environmental effects.

The proposed action utilizes largely extant prescriptive requirements for timber operations to clarify the operational and disclosure requirements for less than 3-acre

conversion exemption timber operations, as well as certain right-of-way maintenance and construction activities.

Articles 1 through 14 of Subchapters 4, 5, and 6 of the Forest Practice Rules impose a combination of performance and prescriptive requirements on Timber Operations which preserve and enhance environmental quality, and which serve to prevent potential environmental impacts resulting from such operations. Timber Operations pursuant to less than 3-acre conversion exemptions, public and private utility right-of-way construction and non-*de minimis* maintenance, and public utility right-of-way construction and maintenance on certain properties are all currently subject to these regulatory requirements. The proposed action does not eliminate any extant environmental protection regulations, but does introduce additional prescriptive prohibitions on certain activities, clarifies others, and greatly improves the clarity surrounding the disclosure required for what had previously been a largely undocumented process. Please see discussion of individual provisions within “Specific Purpose Of Each Adoption, Amendment Or Repeal (Pursuant To Gov § 11346.2(B)(1)) And The Rationale For The Agency’s Determination That Each Adoption, Amendment Or Repeal Is Reasonably Necessary To Carry Out The Purpose(S) Of The Statute(S) Or Other Provisions Of Law That The Action Is Implementing, Interpreting Or Making Specific And To Address The Problem For Which It Is Proposed (Pursuant To Gov §§ 11346.2(B)(1) And 11349(A) And 1 CCR § 10(B))” for additional information related to these protection measures.

Where the proposed action introduces an exemption for certain *de minimis* right-of-way maintenance activities, these activities have generally been categorically determined, by the California Natural Resources Agency, not to have a significant effect on the environment and are already categorically exempt from CEQA pursuant to 14 CCR § 15301(b).<sup>4</sup> The regulations within the proposed action place additional conditional limitations on the potential *de minimis* activities through the imposition of prescriptive width limitations on those activities which are subject to the exemption. These prescriptive requirements limit both the scope and the potential for impact for these activities which are generally without impact even outside of the limitations, per CEQA guidelines. For maintenance activities outside of these areas, Timber Operations are subject to all of the same performance-based and prescriptive regulations of Articles 1

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<sup>4</sup> Within CEQA, PRC § 21084(a) requires that “(a) The guidelines prepared and adopted pursuant to Section 21083 shall include a list of classes of projects that have been determined not to have a significant effect on the environment and that shall be exempt from this division. In adopting the guidelines, the Secretary of the Natural Resources Agency shall make a finding that the listed classes of projects referred to in this section do not have a significant effect on the environment.” Regarding the proposed action, the guidelines in 14 CCR § 15301 identify that such projects include “...the operation, repair, maintenance, permitting, leasing, licensing, or minor alteration of existing public or private structures, facilities, mechanical equipment, or topographical features, involving negligible or no expansion of existing or former use. The types of “existing facilities” itemized below are not intended to be all-inclusive of the types of projects which might fall within Class 1. The key consideration is whether the project involves negligible or no expansion of use. Examples include but are not limited to: ... (b) Existing facilities of both investor and publicly-owned utilities used to provide electric power, natural gas, sewerage, or other public utility services;”

through 14 of Subchapters 4, 5, and 6 of the Forest Practice Rules which preserve and enhance environmental quality as discussed above.

Outside of this exemption, the permitted operations within the proposed action are currently extant within the ministerial processes described within this action, as well as potentially through the less prescriptive harvesting mechanisms of traditional Timber Harvesting Plans, and the opportunity to conduct conversion Timber Operations exists on potentially all Timberland throughout the state. The current regulations related to less than 3-acre conversion exemptions avoid environmental impacts through the prescriptive requirements within 14 CCR § 1104.1, as well as the existing operational requirements, prohibitions, and conditions throughout the balance of the Rules. The proposed action imposes additional oversight opportunities for the RPF (within 14 CCR § 1104.1(g)(10)) and review team agencies (14 CCR § 1104.1(e)) in order to promote compliance with all regulatory requirements which exist to eliminate the potential for, or avoid, environmental impacts.

Plans, and other regulatory mechanisms which permit timber operations, contain a mix of project relevant avoidance and mitigation measures to reduce the risk for potential significant adverse effects. Importantly, the notices of exemption contemplated by the proposed action are synonymous with the defined term “Plan” when applying operational Rules of the Act.

Pursuant to 14 CCR § 896(a), it is the Board's intent that no Plan shall be approved which fails to adopt feasible mitigation measures or alternatives from the range of measures set out or provided for in the Rules which would substantially lessen or avoid significant adverse impacts which the activity may have on the environment

Once Plans are approved, state representatives continue with compliance inspections of approved Plans until the conclusion of the Plan's lifespan. Where the Rules or approved Plan provisions have been violated, specified corrective and/or punitive enforcement measures, including but not limited to financial penalties, are imposed upon the identified offender(s).

In summary, the proposed action does not have the potential to result in significant adverse environmental effects.